

1 **KAZEROUNI LAW GROUP, APC**

2 Abbas Kazerounian, Esq. (SBN: 249203)
3 ak@kazlg.com

4 Matthew M. Loker, Esq. (SBN 279939)

5 ml@kazlg.com

6 2700 N. Main Street, Ste. 1000

7 Santa Ana, California 92705

8 Telephone: (800) 400-6808

9 Facsimile: (800) 520-5523

10 *Attorneys for Plaintiff,*

11 Timothy Barrett

12 **UNITED STATES DISTRICT COURT**
13 **SOUTHERN DISTRICT OF CALIFORNIA**

14 **TIMOTHY BARRETT,
15 INDIVIDUALLY AND ON
16 BEHALF OF ALL OTHERS
17 SIMILARLY SITUATED,**

18 Plaintiff,

19 v.

20 **SPECIAL T TRAVEL
21 SERVICE, INC.,**

22 Defendants.

23 **Case No.: '13CV0526 MMANLS**

24 **CLASS ACTION COMPLAINT
25 FOR DAMAGES**

26 **JURY TRIAL DEMANDED**

27 **INTRODUCTION**

- 28 1. TIMOTHY BARRETT (“Plaintiff”) brings this class action for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of SPECIAL T TRAVEL SERVICES, INC. and its related entities, subsidiaries and agents (“Defendant”) in willfully employing and/or causing to be employed certain recording equipment in order to record to the telephone conversations of Plaintiff without the knowledge or consent of Plaintiff, in violation of California

Penal Code §§ 630 *et seq.*, thereby invading Plaintiff's privacy. Plaintiff alleges as follows upon personal knowledge as to their own acts and experiences, and, as to all other matters, upon information and belief, including the investigation conducted by his attorneys.

2. California Penal Code § 632.7 prohibits one party to a telephone call from intentionally recording the same conversation without the knowledge or consent of the other while the person being recorded is on a cellular telephone. There is no requirement under California Penal Code § 632.7 that the communication be confidential. Plaintiff alleges that Defendant continues to violate Penal Code § 632.7 by impermissibly recording its telephone conversations with California residents while said residents are on cellular telephones.

JURISDICTION AND VENUE

3. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident of the State of California, seeks relief on behalf of a California class, which will result in at least one class member belonging to a different state than that of Defendants, a company incorporated in the State of Florida and principal place of business in Florida. Plaintiff also seeks the greater of statutory damages of \$2,500 per violation or three times actual damages per violation pursuant to Penal Code § 632.7, which, when aggregated among a proposed class number in the tens of thousands, exceeds the \$5,000,000 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

4. Venue is proper in the United States District Court for the Southern District of California pursuant to 28 U.S.C. § 1391(b).

PARTIES

1 5. Plaintiff is, and at all times mentioned herein was, an individual citizen and
2 resident of the State of California.

3 6. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and
4 at all times mentioned herein was, a company whose principal place of
5 business is in Florida and State of Incorporation is Florida. Defendant has a
6 policy and practice of recording telephone conversations, including cellular
7 telephone conversation, with the public, including California residents.
8 Defendant's employees and agents are directed, trained and instructed to,
9 and do, record, the telephone conversations with the public, including
10 California residents.

11 **FACTUAL ALLEGATIONS**

12 7. Defendant is, and at all times mentioned herein was, a professional
13 corporation. Plaintiff is informed and believes, and on the basis of that
14 information and belief alleges, that at all times mentioned in this Complaint,
15 Defendants were the agents and employees of their co-defendants, and in
16 doing the things alleged in this Complaint, were acting within the course and
17 scope of that agency and employment.

18 8. At all times relevant, Plaintiff was an individual residing within the State of
19 California.

20 9. Since January 2013, Plaintiff had numerous telephone communications with
21 certain employees, officers and/or agents of Defendant.

22 10. Specifically, on February 26, 2013, Defendant contacted Plaintiff by cellular
23 telephone in order to solicit Plaintiff's business. After speaking with
24 Defendant for a period of time, Plaintiff inquired as to whether the
25 conversation was being recorded and Defendant responded for the first time
26 that Defendant records all calls between Defendant and consumers.

- 1 11. Plaintiff had no reasonable expectation that any of Plaintiff's telephone
2 conversations with Defendant would be recorded due to the private subject
3 matter being discussed.
- 4 12. Plaintiff was shocked to discover that such a confidential communication
5 was being recorded by Defendant without Plaintiff's knowledge or consent.
- 6 13. Plaintiff found Defendant's clandestine recording to be highly offensive due
7 to the delicacy of the topics discussed during said conversations.
- 8 14. Had Plaintiff been warned at the outset that Plaintiff's cellular telephone
9 communication with Defendant was being recorded, Plaintiff would not
10 have engaged in said telephonic communication.
- 11 15. Each of these conversations with Plaintiff, were without Plaintiff's
12 knowledge or consent, recorded by Defendant, causing harm and damage to
13 Plaintiff. Prior to Plaintiff's query on the matter, Plaintiff was never
14 informed that Plaintiff's telephone calls were being recorded. At no time
15 during these calls did Plaintiff give consent for the telephone calls to be
16 recorded.
- 17 16. Plaintiff is informed and believes, and thereon alleges, that during the
18 relevant time period, Defendant has had a policy and a practice of recording
19 telephone conversations with consumers. Defendant's employees and agents
20 are directed, trained and instructed to, and do, record telephone
21 conversations with the public, including Plaintiff and other California
22 residents.
- 23 17. Plaintiff is informed and believes, and thereon alleges that from the
24 beginning of 2012 to the present, Defendant has installed and/or caused to be
25 installed certain recording equipment in its employees' or agents' telephone
26 lines. Defendant uses these devices to record each and every telephone
27 conversation on said telephone lines.
- 28

- 1 18. Plaintiff is informed and believes, and thereon alleges, that during the
2 relevant time period, Defendant has had all of its calls to the public,
3 including those made to California residents, recorded without the
4 knowledge or consent of the public, including Plaintiff and other California
5 residents.
- 6 19. Defendant's conduct alleged herein constitutes violations of the right to
7 privacy to the public, including Plaintiff and other California residents, and
8 California Penal Code § 630 *et seq.*

9 **CLASS ACTION ALLEGATIONS**

- 10 20. Plaintiff brings this action on behalf of himself and on behalf of all others
11 similarly situated ("The Class").
- 12 21. Plaintiff represents, and is a member of, "The Class" defined as follows:
13 "All persons in California whose inbound and outbound cellular telephone
14 conversations were recorded without their consent by Defendant within one
15 year prior to the filing of the original Complaint in this action."
- 16 22. Defendant, and its employees and agents are excluded from The Class.
17 Plaintiff does not know the number of members in The Class, but believes
18 this number to be in the tens of thousands, if not more. Thus, this matter
19 should be certified as a Class action to assist in the expeditious litigation of
20 this matter.
- 21 23. This suit seeks only damages and injunctive relief for recovery of economic
22 injury on behalf of The Class and it expressly is not intended to request any
23 recovery for personal injury and claims related thereto. Plaintiff reserves the
24 right to expand The Class definitions to seek recovery on behalf of
25 additional persons as warranted as facts are learned in further investigation
26 and discovery.

- 1 24. The joinder of The Class members is impractical and the disposition of their
2 claims in the Class action will provide substantial benefits both to the parties
3 and to the Court. The Class can be identified through Defendant's records.
4 25. There is a well-defined community of interest in the questions of law and
5 fact involved affecting the parties to be represented. The questions of law
6 and fact to The Class predominate over questions which may affect
7 individual Class members, including the following:
8 a. Whether Defendant has a policy of recording incoming and/or outgoing
9 calls;
10 b. Whether Defendant has a policy of recording incoming and/or outgoing
11 calls initiated to a cellular telephone;
12 c. Whether Defendant discloses to callers and/or obtains their consent that
13 their outgoing telephone conversations were being recorded;
14 d. Whether Defendant's policy of recording outgoing calls to cellular
15 telephones constituted a violation of California Penal Code § 632.7
16 e. Whether Plaintiff, The Class were damaged thereby, and the extent of
17 damages for such violations; and
18 f. Whether Defendants should be enjoined from engaging in such conduct
19 in the future.
20 26. Plaintiff is asserting claims that are typical of The Class because every other
21 member of The Class, like Plaintiff, was exposed to virtually identical
22 conduct and are entitled to the greater of statutory damages of \$2,500 per
23 violation pursuant to California Penal Code § 632.7.
24 27. Plaintiff will fairly and adequately represent and protect the interests of The
25 Class in that Plaintiff has no interest antagonistic to any member of The
26 Class. Plaintiff has retained counsel experienced in handling class action
27 claims to further ensure such protection.

- 1 28. Plaintiff and the members of The Class have all suffered irreparable harm as
2 a result of the Defendant's unlawful and wrongful conduct. Absent a class
3 action, The Class will continue to face the potential for irreparable harm. In
4 addition, these violations of law will be allowed to proceed without remedy
5 and Defendant will likely continue such illegal conduct. Because of the size
6 of the individual Class member's claims, few, if any, Class members could
7 afford to seek legal redress for the wrongs complained of herein.
- 8 29. A class action is a superior method for the fair and efficient adjudication of
9 this controversy. Class-wide damages are essential to induce Defendant to
10 comply with federal and California law. The interest of The Class members
11 in individually controlling the prosecution of separate claims against
12 Defendant is small because the maximum statutory damages in an individual
13 action for violation of privacy are minimal. Management of these claims is
14 likely to present significantly fewer difficulties than those presented in many
15 class claims.
- 16 30. Defendant has acted on grounds generally applicable to The Class, thereby
17 making appropriate final injunctive relief and corresponding declaratory
18 relief with respect to The Class as a whole.

19 **FIRST CAUSE OF ACTION**

20 **INVASION OF PRIVACY: VIOLATION OF PENAL CODE § 632.7**

- 21 31. Plaintiff incorporates by reference all of the above paragraphs of this
22 Complaint as though fully stated herein.
- 23 32. California Penal Code § 632.7 prohibits in pertinent part “[e]very person
24 who, without the consent of all parties to a communication...intentionally
25 records, or assists in the...intentional recordation of, a communication
26 transmitted between...a cellular radio telephone and a landline telephone.”
27 Thus, on its face, California Penal Code § 632.7 precludes the recording of
28 all communications involving a cellular telephone.

33. Though similar, California Penal Code § 632 and 632.7 are not duplicative and protect separate rights. California Penal Code § 632.7 grants a wider range of protection to conversations where one participant uses a cellular phone or cordless phone. For example, the “confidential communication” requirement of California Penal Code § 632 is absent from California Penal Code § 632.7

34. As before, Defendant caused to be employed certain recording equipment on the telephone lines of all employees, officers, directors, and managers of Defendant.

35. Plaintiff is informed and believes, and thereupon alleges, that all these devises were maintained and utilized to record each and every outgoing telephone conversation over said telephone lines.

36. Said recording equipment was used to record the telephone conversations of Plaintiff and the members of The Class utilizing cellular telephones, all in violation of California Penal Code § 632.7.

37. Based on the foregoing, Plaintiff and the members of The Class are entitled to, and below herein do pray for, their statutory remedies and damages, including but not limited to, those set forth in California Penal Code § 632.7; and California Penal Code § 637.2

38. Because this case is brought for the purposes of enforcing important rights affecting the public interest, Plaintiff and The Class seek recovery of their attorney's fees pursuant to the private attorney general doctrine codified in Code of Civil Procedure § 1021.5, or any other statutory basis.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff, The Class members the following relief against Defendant:

39. That this action be certified as a class action on behalf of The Class and Plaintiff be appointed as the representative of The Class;

40. For \$2,500 per violation of California Penal Code § 632.7 for Plaintiff and each member of The Class;
41. Injunctive relief in the form of an order requiring Defendant to disgorge all ill-gotten gains and awarding Plaintiff, The Class full restitution of all monies wrongfully acquired by Defendant by means of such unfair and unlawful conduct;
42. That the Court preliminarily and permanently enjoin Defendant from recording each and every oncoming and outgoing telephone conversation with California resident, including Plaintiff and The Class, without their prior consent, as required by California Penal Code § 630, *et seq.*, and to maintain the confidentiality of the information of Plaintiff and The Class;
43. For exemplary or punitive damages;
44. For costs of suit;
45. For prejudgment interest at the legal rate; and
46. For such further relief as this Court deems necessary, just, and proper.

TRIAL BY JURY

Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Date: March 4, 2013

KAZEROUNI LAW GROUP, APC

By: /s Abbas Kazerounian
ABBAS KAZEROUNIAN, ESQ.
ATTORNEY FOR PLAINTIFF